U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C- INC.

DATE: MAY 24, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a provider of information technology services, seeks to employ the Beneficiary as an analyst. It requests his classification under the second-preference, immigrant category as a member of the professions holding an advanced degree or its equivalent. Immigration and Nationality Act (the Act) section 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). This employment-based, "EB-2" category allows a U.S. business to sponsor a foreign national with a master's degree, or a bachelor's degree followed by five years of experience, for lawful permanent resident status.

The Acting Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not establish the Beneficiary's possession of a degree in a field of study acceptable for the offered position.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary completed coursework sufficient for a degree in the accepted field of "computer science."

Upon *de novo* review, we will dismiss the appeal.

I. EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, an employer must first obtain certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position, and that employment of a foreign national will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If the DOL certifies a position, an employer must next submit the certification with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Among other things, USCIS considers whether a beneficiary meets the minimum requirements of a certified position and whether a petitioner can pay a proffered wage. If USCIS approves a petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

II. THE EDUCATIONAL REQUIREMENTS

A petitioner must establish a beneficiary's possession, by a petition's priority date, of all DOL-certified job requirements.[1] *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Acting Reg'l Comm'r 1977). In evaluating a beneficiary's qualifications, USCIS examines the job-offer portion of an accompanying labor certification to determine the minimum requirements of an offered position. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith,* 696 F.2d 1008, 1015 (D.C. Cir. 1983) (holding that the "DOL bears the authority for setting the *content* of the labor certification") (emphasis in original).

Here, the labor certification states the minimum educational requirements of the offered position of analyst as a U.S. bachelor's degree, or a foreign equivalent degree, in "Computer Science or equivalent," "Computer Applications, Computer Engineering, [or] Information Technology." The Beneficiary attested that an Indian university awarded him a bachelor's degree in "Computer Science, or equivalent" in 2000.

The Petitioner provided copies of the Beneficiary's master of business administration degree (MBA) and corresponding marks memoranda. The documents identify the MBA as a two-year degree that followed the Beneficiary's receipt of a three-year bachelor of science degree. The Petitioner also submitted an independent evaluation of the Beneficiary's qualifications. The evaluation concludes that, based on a combination of education and employment experience, the Beneficiary has the equivalent of a U.S. bachelor of science degree in computer information systems.

Based on the evidence submitted, the Director concluded that the Beneficiary did not possess the required education. The labor certification states that the position requires a U.S. bachelor's degree or a foreign equivalent degree. Asked on the certification whether it will accept an alternate combination of education and experience, the Petitioner answered "No." As such, the evaluation's conclusion that the Beneficiary has a U.S. baccalaureate equivalency based on a combination of education and experience does not establish his possession of a U.S. bachelor's degree or foreign equivalent degree, as required by the labor certification.

On appeal, the Petitioner submits a new evaluation concluding that the Beneficiary's MBA equates to a U.S. bachelor of business administration degree, with a minor in computer science. Disregarding the Beneficiary's employment experience, this evaluation equates his MBA to a U.S. bachelor's degree based solely on education. But the evaluation does not establish that the degree is in a field of study acceptable for the offered position. The evaluated field of business administration does not match any of the disciplines the Petitioner listed as acceptable on the labor certification. The labor certification also does not state the Petitioner's acceptance of related fields. *See SnapNames.com, Inc. v. Chertoff,* No. CV 06-65-MO, 2006 WL 3491005 *7 (D.Or. Nov. 30, 2006) (holding that "where the plain language of [labor certification] requirements does not support the

[1] This petition's priority date is June 17, 2016, the date the DOL received the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date).

petitioner's asserted intent, the agency does not err in applying the requirements as written"). Job requirements on a labor certification "as described, must represent the employer's actual minimum requirements for the job opportunity." 20 C.F.R. § 656.17(i)(1); *see also Matter of JP Morgan Chase & Co.*, 2011-PER-01164, 2012 WL 3091676 *3 (BALCA July 25, 2012) (holding that "[t]he onus is on the Employer to make it perfectly clear . . . what the Employer seeks").[2]

The Petitioner also contends that the Beneficiary has an equivalent of a U.S. bachelor's degree in computer science based on the nature of the coursework he completed. But the conclusions of the evaluations submitted by the Petitioner contradict its contention. As previously discussed, one evaluation concludes that the Beneficiary's MBA equates to a U.S. bachelor's degree in business administration. The other states that he has a U.S. baccalaureate equivalency in computer information systems. Thus, contrary to the Petitioner's assertion, the evaluations submitted do not support the Beneficiary's claimed possession of a bachelor's degree in computer science. Based on the foregoing, the record does not establish the Beneficiary's possession of the minimum education required for the offered position.

III. ABILITY TO PAY THE PROFFERED WAGE

Although unaddressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage. A petitioner must demonstrate its continuing ability to pay a proffered wage, from a petition's priority date until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

Here, the labor certification states the proffered wage of the offered position of analyst as $106,000 a year. As previously noted, the petition's priority date is June 17, 2016. The Petitioner submitted copies of its federal income tax return for 2015. Contrary to 8 C.F.R. § 204.5(g)(2), however, the record lacks required evidence of the Petitioner's ability to pay the proffered wage in 2016, the year of the petition's priority date, or thereafter.

Also, USCIS records indicate the Petitioner's recent filings of multiple immigrant petitions for other beneficiaries. A petitioner must demonstrate its ability to pay the proffered wage of each petition it files until a beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). The Petitioner here must therefore demonstrate its ability to pay the combined proffered wages of petitions that it filed, or that were pending or approved, after this petition's priority date of June 17, 2016, until their beneficiaries obtained lawful permanent residence.[3] *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our revocation of a petition's approval where, as of its grant, a petitioner did not demonstrate its ability to pay multiple beneficiaries).

[2] Although not bound by BALCA decisions, we may follow their reasoning in analogous cases.

[3] The Petitioner need not demonstrate its ability to pay proffered wages of petitions that were denied, withdrawn, or revoked without a pending appeal or motion. It also need not demonstrate its ability to pay proffered wages before petitions' priority dates or after their beneficiaries obtained lawful permanent residence.

In any future filings in this matter, the Petitioner must provide required evidence of its ability to pay the proffered wage in 2016 and, if available, 2017. The Petitioner must also provide the proffered wages and priority dates of petitions that it filed, or that remained pending or approved, after June 17, 2016. The Petitioner should also submit proof of any wages it paid to corresponding beneficiaries after that date. The Petitioner may also provide additional evidence, including materials supporting the ability-to-pay factors stated in *Matter of Sonegawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

IV. CONCLUSION

The record on appeal does not establish the Beneficiary's possession of a degree in a field of study acceptable for the offered position. We will therefore affirm the Director's decision.

ORDER: The appeal is dismissed.

Cite as *Matter of C- Inc.*, ID# 1258646 (AAO May 24, 2018)